IN THE HIGH COURT OF UTTARANCHAL, NAINITAL.

No. 10- COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING.

[Chapter VIII, Rule 32(2) (b)]

Criminal Appeal No. 746/2001
(Old No. 593/1991)

Hikmati Lal and another … Appellants.

Vs.

State .. Respondent.

Decided on 08-09-2005

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

(Irshad Hussain, J.)

(B.S.Verma, J.)

Dated: 08-09-2005.

In the High Court of Uttaranchal, at Nainital.

Criminal Appeal No. 746/2001
(Old No. 593/1991)

1- Hikmati Lal S/o Bhajani Lal,
2- Jaman Lal S/o Bhajani Lal,
Both residents of village
Barav, Patwari Circle Barav,
District Chamol .. Appellant.

Vs.

State .. Respondent.

Sri N.S. Negi and Sri Rajendra Kotiyal, learned counsel for the appellants.
Sri G.S. Sandhu, learned A.G.A. for the State.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble B.S. Verma, J.

Dated: 08-09-2005

(P.C.):

This appeal is directed against the judgment dated 21-3-1991, passed by the then Sessions Judge, Chamoli, convicting and sentencing both the accused-appellants to imprisonment for life under Sections 302/34 I.P.C. and 120-B I.P.C. and seven years R.I. under Section 201 I.P.C. However the sentences were directed to run concurrently.

2- The factual scenario as highlighted by the prosecution is as follows:

Bachan Lal deceased (hereinafter referred as deceased) and the accused, residents of village Barav, Patwari Circle Barav of District Chamoli, have common roots. Their relations were not cordial and accused wanted the deceased to leave the village so that the accused may usurp his landed property in the Abadi. On account of inimical attitude of the accused, Smt. Mangla, wife of the deceased abandoned him and went to reside with her parents in village Bhuraga to Tehri Garhwal. On 17-6-1989 accused again gave threat of dire consequences to the deceased. Next day on 18-6-1989 deceased submitted an application in that regard to the Pargana Magistrate, Ukhimath. In that application the cause of inimical terms was disclosed and the indulgence of the Magistrate concerned was sought by the deceased to bound down the accused so that they may not harass the deceased and let him live peacefully. On 27-6-1989 at

about 3 P.M. accused and their other family members and Manik Lal (absconder accused) quarreled with Smt. Sobati Devi, the mother of the deceased complaining to her that her son had given an application to the Magistrate against them and they wanted that the things should be settled in a Panchayat in the presence of the Pradhan of the village. At that time accused Hikmati Lal and Manik Lal also gave a threat that they will see the deceased tomorrow.

3- The next day, that is, on 28-6-1989 deceased went to collect fodder for the cattle from the jungle but did not return to his house and remained untraceable. On 2-7-1989 the dead body of the deceased was however found hanging by a tree in the jungle of 'Chari Paira' situate on the boundary of village Kandi of Tehsil Ukhimath. The information was then sent to the Circle Patwari by village Pradhan whereafter Circle Patwari Bhatwari Sunar held inquest on the dead body of the deceased on 3-7-1989 and dispatched it for post mortem. The autopsy on the dead body was held at 1 P.M. on 4.7.1989 by Dr. Vinod Kumar Dhaundiyal and the cause of death determined was asphyxia as a result of strangulation about 8 to 10 days ago. On completion of the investigation of the case, charge sheet was submitted against these two appellants Hikmati Lal and Jaman Lal and four of their family ladies namely Smt. Jupali Devi, Smt. Kamala Devi, Smt. Bachhi Devi and Smt. Indira Devi and one of absconding accused Manik Lal on 21.10.1989 by Circle Patwari Barav who had later on been entrusted with the investigation of the case.

4- All the six accused who faced the trial were charged under Sections 140-B, 147, 302/149 and 201 I.P.C. and all of them pleaded not guilty and claimed to be tried.

5- At the trial the prosecution examined eleven witnesses. They were P.W.1, Swaru Lal and informant of the case, P.W.2, Suresha Singh, P.W.3, Smt. Sobati Devi, the mother of the deceased, P.W.4, Birendra Singh, Ahalmad of the court of Pargana Magistrate Ukhimath, P.W.5, Kundi Lal, P.W.6, Dr. Vinod Kumar Dhaundiyal, the autopsy surgeon, P.W.7 Sri Lallu Singh Pargana Magistrate, P.W.8,Roop Chandra Singh Pradhan of village Barav, P.W.9, Mitra Nand Bhatt, who partly investigated the crime, P.W.10, Jagdish

Prasad Maikhuri, another Investigating Officer and P.W.11, Pushkar Singh Chauhan, who lastly investigated the case and placed charge sheet against the accused and others.

6- No evidence was adduced in defence. The documents of the prosecution consisted of written report dated 13.7.1989 Ext. Ka.1, which was submitted by P.W.1 before the Naib Tehsildar, Ukhimath and on the basis of which check F.I.R, Ext. Ka.15 was drawn on 14.7.1989 by Circle Patwari, Barav, Tehsil Ukhiamth, District Chamoli and investigation was then taken up by this circle patwari from circle Patwari Bhatwari Sunar from whose jurisdiction the dead body of the deceased was recovered while hanging by a tree. Ext. Ka.2, is said to be the carbon copy of the application submitted by the deceased before the Pargana Magistrate, Ukhimath on 18.6.1989. Ext. Ka.3 is the extract of the register of application received at the office of the Pargana Magistrate, Ukhimath and according to this entry some application was given by Bachan Lal son of Roop Lal of village Barav on 27.6.1989 and it was sent for enquiry to the circle patwari concerned vide challan No. 412, Ext. Ka.4 as stated thereto by P.W. 4 Birendra Singh, an Ahalmad of the court of Pargana Magistrate Ukhimath. Ext. Ka.6, autopsy report was proved by the medical officer and the medical evidence was to the effect that there was a ligature mark all around the neck of the deceased and hyoid bone of the deceased was found fractured leading to asphyxia as a result of strangulation. Inquest report of the deceased was proved as Ext. Ka.9 by the evidence of Investigating Officer P.W.9, Mitra Nand Bhatt, who partly investigated the case. He also proved other relevant documents of the inquest. The charge sheet, Ext. Ka.17 against the accused and others was proved by P.W.11, Pushkar Singh Chauhan, who lastly investigated the case.

7- There was no direct evidence to prove the involvement of the accused in the commission of the crime and the case rests squarely on circumstantial evidence. The circumstances, which form the factual aspects of the case, have been pressed in to service by the prosecution are as under:

1- The accused and their family members intended the deceased to leave the village in order to usurp his landed

property in the Abadi and they even managed to force the wife of the deceased to leave the village prior to 17.6.1989.

2- On 17.6.1989 both these accused, came in the Chawk of the deceased and told him to leave the village and on his failure to comply their command, gave him a threat of dire consequences.

3- The next day on 18.6.1989 the deceased got scribed a written complaint, Ext. Ka.2 against the accused and gave it to the Pargana Magistrate, Ukhimath asking for legal action against the accused.

4- On 27.6.1989 the accused quarrelled with the mother of the deceased complained about the application given by the deceased against them and on the appearance of the deceased at that place manhandled him and took him to the pradhan of the village to seek indulgence of the pradhan in the matter and to settle the dispute.

5- The accused and their accomplishes thereafter assembled together at the house of one Indira on 27.6.1989 and entered in to a conspiracy to eliminate the deceased after getting him summoned in the jungle the next day on 28.6.1989 on some false pretest.

6- The accused made extra-judicial confession before Beeru Lal and 28-6-1989 at about 9.30 P.M. that they have committed the murder of the deceased and after taking Beeru Lal in to confidence impressed upon him not to disclose this fact to any one else.

8- Placing reliance on the evidence of the prosecution, learned Sessions Judge noticing the fact that the prosecution case was based on circumstantial evidence, came to the conclusion that all the incriminating circumstances have been established beyond reasonable doubt, making a complete chain to establish that these accused conspired and in pursuance thereof committed the murder of deceased some time on 28-6-1989 in the ‘Chari Paira’ jungle of village Kandi, Tehsil Ukhiumath and to screen themselves from legal punishment hanged the dead body by a tree as a measure of

disguise that the incident was suicide by the deceased. With these conclusions the accused were convicted and sentenced as aforesaid.

9- We have heard the learned counsel for the appellants and the learned A.G.A. and have carefully re-appreciated the evidence on record and have gone through the judgment under appeal with the help of both the learned counsel.

10- It is not in dispute that the death of Bachan Lal was in circumstances other than natural. According to the prosecution the accused Jaman Lal made extra-judicial confession before one Beeru Lal that he with the assistance of other co-accused committed the murder of Bachan Lal in the jungle on 28-6-1989 and said Beeru Lal was also warned not to tell about the murder to any one else otherwise he will be meeting the same fate as that of the deceased. The statement of Beeru Lal was got recorded before the Pargana Magistrate, Ukhimath under Section 164 of the Code of Criminal Procedure on 7-9-1989. Beeru Lal was not examined in evidence by the prosecution for the reasons best known to it. However the then Pargana Magistrate Sri Lallu Singh (P.W.7) was produced in evidence to prove the statement of Beeru Lal, Ext. Ka.7 recorded by him under Section 164 of the Code of Criminal Procedure. Proving of the statement by the Pargana Magistrate was of no legal consequence when Beeru Lal himself was not produced in evidence. Therefore, this piece of evidence could not be taken to infer that the death of the deceased was homicidal. According to the medical evidence of Dr. Vinod Kumar Dhaundiyal (P.W.6) the death was caused due to asphyxia as a result of strangulation and therefore it was required to be seen whether there were incriminating circumstances to satisfactorily establish that the deceased was probably strangulated to death on account of enmity. In this backdrop and the evidence on record it is to be seen whether the incriminating facts and circumstances are sufficient to draw an inference that a complete chain of the circumstances stands formed leading to a definite conclusion that none other than the accused were responsible for committing the crime in question.

11- In regard to the circumstance at serial No.1 it need to be stated that the informant Swaru Lal (P.W.1) and Smt. Sobati Devi

(P.W.3) are the step brother and mother respectively of the deceased and they were residing together in village Barav. The positive case set up by the prosecution was that the accused who were distantly related to the deceased wanted to usurp the landed property of the Abadi belonging to the deceased and in order to achieve their nefarious design and object they used to quarrel with the deceased and wanted him to leave the village. It was also the case set up by the prosecution that prior to 17-6-1989 Smt. Mangala, the wife of the deceased was so harassed that she had left her marital home and went to reside in her parental village Bhuraga in District Tehri Garhwal. Considering the specific allegations, Smt. Mangal Devi, the wife of the deceased was the most natural and probable witness of this incriminating circumstance against the accused, but she was not examined in evidence and record reveal that no reason was given as to why this important witness was not brought forward by the prosecution. There can be no doubt, as argued by the learned counsel for the accused, that an adverse inference can safely be drawn against the prosecution that in case Smt. Mangala Devi was to be produced in evidence she would not have supported the case of the prosecution in that regard.

12- It also does not stand to reason as to how the accused were to be benefited by migration of the deceased from the village because the step brother of the deceased and his mother were already in the village and they were to have their claim on the property of the deceased in case he was to leave the village or in any way do not remain alive. This broad aspect of the case should not have been ignored by the learned Sessions Judge while appreciating the evidence of informant Swaru Lal and Smt. Sobati Devi. Both these witnesses have not given any specific instance as to when prior to 17.6.1989 any quarrel took place between the accused and the deceased and the deceased was called upon to leave the village. There is also no independent evidence to support their claim in that regard and in the totality of the circumstances of the case and in the absence of any specific instance and particularly in the absence of the evidence of the wife of the deceased, we find it difficult to find ourselves in agreement with the inference drawn by the learned

Sessions Judge that the accused intended to usurp the landed property in the Abadi belonging to the deceased and they even forced the wife of the deceased to leave her husband and the village prior to 17-6-1989. In other words the first circumstance said to be the incriminating one was not established against the accused beyond reasonable doubt.

13- Incriminating circumstances mentioned at serial Nos. 2 and 3 could be taken up together as the evidence in regard to these two circumstances is common. In the written report, Ext. Ka.1, the case set up also was that on 17.6.1989 some time in the evening accused came in the chawk of the deceased and finally told the deceased to leave the village as by that time he has failed to obey their command in that regard and at that time they exchanged uncomplimentary remarks and in the process the deceased was also given a threat of dire consequences by the accused. Both P.W.1 and P.W.3 do not spoke of specifically of such an incident of 17-6-1989 but P.W.1 in order to lent credence to this allegation relied heavily upon a so called written complaint (carbon copy of which was marked as Ext. Ka.2) said to have been given to the Pargana Magistrate, Ukhimath by the deceased on 18-6-1989 complaining thereon all about untoward incident of 17-6-1989 and also about terror created by the accused to harass him physically and to harm him materially. According to P.W.1 the carbon copy of the application was handed over to him by P.W.3 the mother of the deceased on 13.7.1989 when he got scribed the written report, Ext. Ka.1 and delivered it to Naib Tehsildar, Ukhimath, District Chamoli implicating the accused and others in the crime of murder to the deceased. It clearly appear that the so called written complaint of 18.6.1989 suddenly came as a bolt from the blue although the dead body of the deceased was found way back on 2.7.1989 and there was no indication that the accused or any of their family member have had any connection with the unnatural death of the deceased. These broad features were not considered by the learned Sessions Judge while placing reliance on the evidence adduced by the prosecution to connect so called written complaint of 18.6.1989 in relation to the conduct and attitude of the accused towards the deceased and there can be no

gain saying that it was an error on the part of the learned Sessions Judge in the appreciation of the evidence of the prosecution.

14- As stated above the carbon copy of the application dated 28-6-1989 (Ext. Ka.2) was given to the informant by Smt. Sobati Devi. She gave out that this document was given to her by the deceased but she could not tell as to whether this document was got prepared by her deceased son. She was confronted with her statement under Section 161 of the Code of Criminal Procedure whereupon she admitted to have no given the statement about the existence of this document to the Investigating Officer and for this no reason was disclosed by her. She denied to suggestion that this document was manufactured fictitiously but in the totality of the circumstances of the case and the omission in that regard in the statement given to the Investigating Officer, which in fact tantamount to a contradiction, indicate that her evidence about the existence of this document being highly shaky and discrepant make the suggestion of the defence meaningful. According to the prosecution the application of 18.6.1989 was got scribed by the deceased in the presence of Suresha Singh (P.W.2) who has long standing connection with the deceased and his family and had even visited the house of the deceased to condole the death of the deceased on 4.6.1989. He had all along been in contact with the mother of the deceased but strangely enough nothing was also said by him to the mother of the deceased about any such written complaint of 18.6.1989 having been prepared and given to Pargana Magistrate in his presence by the deceased. He was a well wisher of the deceased and his family and if the application was really in existence he would have naturally and in all probability told about it earlier to the mother of the deceased or even could have come forward to tell all about it to the Investigating Officer. It may be recall that his statement was recorded by the Investigating Officer on 22.7.1989 after a long lapse of the period from the death of the deceased and when the F.I.R. of the case had already been lodged. Therefore, it will not be safe to place reliance on his evidence also.

15- The said document was allegedly got scribed by the witness Kundi Lal (P.W.5) who is petition written by profession and used to

sit in the campus of the Ukhimath Teshil. Strangely enough he gave out that Bachan Lal, on whose asking he prepared the application dated 18.6.1989, was aged about 38-40 years and that Bachan Lal came to him all alone for getting the application prepared. It is in the evidence and also in the autopsy report that Bachan Lal was aged about 20 years and while the witness claimed the age of Bachan Lal to be just about double of that, it becomes clear that this material discrepancy occurred only on account of his falsely claiming that this application was got prepared by him on the asking of Bachan Lal on 18.6.1989. There is also contradiction on the point that Bachan Lal cmae all alone whereas Suresha Singh (P.W.2) claimed that he went with Bachan Lal to get the application prepared and then to deliver it to the Pargana Magistrate, Ukhimath for taking legal action against the accused. Therefore, the evidence of the scribe of the application being highly shaky and discrepant, fail to repose confidence in the genuineness of the said document.

16- P.W.4, Birendra Singh, the Ahalmad of the court of Pargana Magistrate, Ukhimath, was produced by the prosecution to prove that this application was given by the deceased to the Pargana Magistrate for legal action. His evidence also appear to be of no avail because according to him there is entry of some application given by Bachan Lal S/o Roop Lal of village Barav, on 27.6.1989 vide entry of the register, Ext. Ka.3 and which was sent in original vide challan, Ext. Ka.4 to Patwari Circle Barav for necessary report and action. He does not spoke of any application of 18.6.1989. According to him, the report was given by patwari concerned to the effect that the original of any application of the deceased said to have been presented before the death, was not received by him for enquiry. The evidence of this witness also failed to support the claim of the prosecution about any application of 18.6.1989 (Ext. Ka.2) having been given to the Pargana Magistrate and in the totality of the circumstances of the case and the evidence on record we feel it safe to come to the conclusion that the so called carbon copy of the application purported to be of 18.6.1989 was manufactured to make out a case against the accused and reference of the same was then made in the written report, Ext. Ka.1 filed after 12 days of the

recovery of the dead body of the deceased. In other words we are convinced that both these circumstances also were not established by any cogent evidence against the accused.

17- In regard to the circumstance at serial No.4, the evidence of P.W.1 and P.W.3 and village Pradhan Roop Chandra Singh (P.W.8) was put to reckoning on behalf of the prosecution. Informant Swaru Lal gave evidence in regard to the incident of 27.6.1989 but at the same time claimed that after the altercation between the accused and the mother of the deceased and after the deceased also appeared at the scene all of them went to the pradhan Roop Chandra Singh to have the dispute settled amicably. Similar claim was made by Smt. Sobati Devi (P.W.3). however the pradhan Roop Chandra Singh (P.W.8) categorically stated that neither the accused nor the deceased nor the mother of the deceased came to him about 5 or 6 days before the recovery of the dead body of the deceased in connection with an dispute or quarrel among them. Strangely enough he was not declared hostile by the prosecution. This witness had even sent the information, vide Ext. Ka.8, to the circle patwari about the recovery of the dead body on 2.7.1989 and at that time also there was no indication that 5 or 6 days before the recovery of the dead body or particularly on 27.6.1989 there was any quarrel with the deceased and he was made to intervene in the dispute between the deceased and the accused on that day. It is thus evident that the independent evidence of the pradhan do not corroborate the evidence of informant and also the mother of the deceased.

18- Further it is also of significance that had there been any such quarrel on 27.6.1989 the informant Swaru Lal must have naturally told about it to the patwari who came there to hold inquest on the dead body of the deceased on 3.7.1989 and according to the witness he was present there at that time besides 40-50 other people who have collected there at that time. The witness even stated that he was interrogated by the patwari at that time. If there was any such incident on 27.6.1989 the witness was expected to have told all about it to the patwari and other people also and his evidence and conduct thus run counter to the claim now belatedly made to create incriminating circumstance against the accused. The reasoning also

hold good in regard to Smt. Sobati Devi also, who has also not come forward with any such complaint about the incident of 27.6.1989 when the dead body of her son the deceased was recovered. As stated above the allegation in this regard was also in fact fabricated after consultations and deliberations so that some force may be attached to there claim that the accused were involved in the commission of the crime and against those a highly belated written report of 13.7.1989 was got prepared to be given to the Naib Tehsildar inviting investigation of the crime against the accused.

19- From above it is evidence that the learned Sessions Judge also failed to consider the evidence of these witnesses in proper perspective and on mere conjectures and surmises drew an inference that an incident took place on 27.6.1989 when quarrel took place between the accused and the mother of the deceased and later on when the accused came there he was manhandled and was taken to the pradhan of the village soliciting indulgence in the matter and to settle the dispute. We are convinced that this incriminating circumstance was also not proved by any cogent evidence against the accused.

20- so far as the incriminating circumstances mentioned at serial Nos. 5 and 6 are concerned, it need to be stated that witness Beeru Lal and told the Investigating Officer about the conspiracy hatched by the accused at the house of one Indira on 27.6.1989 in order to eliminate the deceased was not examined in the evidence. He was also witness of extra-judicial confession on 28.6.1989 whereby the accused was alleged to have admitted their guilty before him. Non-production of the witness in the evidence thus failed to prove these circumstances against the accused and there was no point in examining Sri Lallu Singh (P.W.7) Pargana Magistrate Ukhimath, in evidence, who was said to have recorded the statement of witness Beeru Lal on 7.9.1989 under Section 164 of the Code of Criminal Procedure. It is also of significance that the prosecution failed to put forward any cogent reason as to why this witness Beeru Lal was withheld and it was rightly argued by the learned counsel for the accused that an adverse inference could legitimately be drawn to the effect that had the witness been examined in the evidence, he would

have belied the claim of the prosecution about any conspiracy to commit the murder of the deceased and also about the claim of extra-judicial confession of the accused before the said witness.

21- In view of above, both these circumstances were also not established against the accused and in turn the failure to prove incriminating circumstance about the alleged extra-judicial confession has the effect of making a safe inference that the death of the deceased was, in all probability not homicidal, but it was probably a case of suicide by hanging, a strong probability also made out by the medical evidence on record. At any rate the incriminating circumstances having not been established by cogent evidence against the accused, no inference of guilt could have justifiably been drawn against them. In other words the circumstances highlighted by the prosecution having not been proved beyond reasonable doubt, fail to connect the accused or any of them with the principal fact sought to be inferred from those circumstances and we do not find ourselves in agreement with the view taken by the learned Sessions Judge to hold the accused guilty of the commission of the offence with which they were charged.

22- Therefore, for the reasons aforesaid, the appeal filed by the accused deserve to be allowed, which we direct. The accused Hikmati Lal and Jaman Lal are, therefore, held not guilty and acquitted of the charges under Sections 120-B I.P.C., 302/34 I.P.C. and 201 I.P.C. They are on bail. Their bail bonds are cancelled and sureties are discharged. They need not surrender.

23- Let the record be transmitted to the trial court.

(B.S. Verma, J.) **(Irshad Hussain, J.)**

ISB